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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DIMITRITZA TOROMANOVA, an
Individual,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; WACHOVIA
MORTGAGE, FSB; NATIONAL DEFAULT
SERVICING CORP; and DOES 1-10,
inclusive,

Defendants.

Case No.: 2:12-cv-00328-GMN-(CWH)

**OPPOSITION TO EX PARTE APPLICATION FOR STAY
OF ENFORCEMENT OF TEMPORARY WRIT OF RESTITUTION IN
UNLAWFUL DETAINER ACTION AND PRELIMINARY INJUNCTION**

I. INTRODUCTION

On June 4, 2012, the plaintiff, Dimitritza Toromanova (“Toromanova”), filed an Ex Parte Application for Stay of Enforcement of Temporary Writ of Restitution in Unlawful Detainer Action and Preliminary Injunction (the “Application”) (Docs. 18 and 19) seeking relief from a Writ of Restitution issued by the Justice Court in connection with an unlawful detainer action. However, this Court does not have authority to review or alter the Justice Court’s decisions. Moreover, as was the case with her first request for injunctive relief in this matter, Toromanova is not entitled to a temporary restraining order, preliminary injunction, or “stay of enforcement.” Accordingly, the Court should deny the Application.

II. STATEMENT OF FACTS

The property involved in this action is located at 2912 Hot Cider Avenue, North Las Vegas, Nevada 89031 (the “Property”). In March 2006, Toromanova executed an Adjustable Rate Mortgage Note Pick-A-Payment Loan (the “Note”) and Deed of Trust in favor of World Savings Bank, FSB (“World Savings”) for \$288,000.¹ The lender and beneficiary of the Deed of Trust was World Savings.²

On or about December 31, 2007, World Savings changed its name to Wachovia Mortgage, FSB (“Wachovia Mortgage”).³ Effective November 1, 2009, Wachovia Mortgage merged with and into Wells Fargo Bank, N.A. and is now known as Wachovia Mortgage, a Division of Wells Fargo Bank, N.A.⁴ Wachovia Mortgage (and its predecessor, World Savings) was a federal savings bank regulated by the Office of Thrift Supervision (“OTS”).⁵

On August 27, 2010, a Notice of Default and Election to Sell Under Deed of Trustee (the “Notice of Default”) was recorded.⁶ At that time, Toromanova was \$25,840.85 in arrears.⁷

¹ See Deed of Trust (Doc. 1-2 at 17), attached to the Petition for Removal (the “Petition”) as Exhibit A; *see also* Note (Doc. 5-1), attached to Wells Fargo Bank, N.A.’s Opposition to Plaintiff’s Motion for Preliminary Injunction (the “Opp. to Mot. for Prelim. Inj.”) as Exhibit 1.

² See Deed of Trust at 1.

³ See Federal Deposit Insurance Corporation notice and history of World Savings Bank’s name change to Wachovia Mortgage (Doc. 5-2), attached to the Opp. to Mot. for Prelim. Inj. as Exhibit 2. Wells Fargo respectfully requests that the Court take judicial notice of the notice and history of World Savings Bank’s name change to Wachovia Mortgage, as it is a “document reflecting official acts of the executive branch of the United States and that they are judicially noticeable pursuant to Rule 201(b)(2) of the Federal Rules of Evidence.” *Gonzalez v. Wells Fargo Bank, FSB*, No. C11-00247, 2011 WL 1877219, at *1 n.2 (N.D.Cal. May 17, 2011).

⁴ See Official Certification of the Comptroller of the Currency regarding merger (Doc. 5-3), a copy of which is attached to the Opp. to Mot. for Prelim. Inj. as Exhibit 3. Wells Fargo respectfully requests that the Court take judicial notice of the Official Certificate of the Comptroller of the Currency as it is a “document reflecting official acts of the executive branch of the United States and that they are judicially noticeable pursuant to Rule 201(b)(2) of the Federal Rules of Evidence.” *Gonzalez v. Wells Fargo Bank, FSB*, No. C11-00247, 2011 WL 1877219, at *1 n.2.

⁵ See Charter of Wachovia Mortgage (Doc. 5-4), attached to the Opp. to Mot. for Prelim. Inj. as Exhibit 4. Wells Fargo respectfully requests that the Court take judicial notice of the Charter of Wachovia Mortgage as it is a “document reflecting official acts of the executive branch of the United States and that they are judicially noticeable pursuant to Rule 201(b)(2) of the Federal Rules of Evidence.” *Gonzalez v. Wells Fargo Bank, FSB*, No. C11-00247, 2011 WL 1877219, at *1 n.2.

⁶ See Notice of Default (Doc. 1-2 at 33), attached to the Petition as Exhibit A.

⁷ *Id.*

Toromanova failed to cure the default and did not elect to participate in the Nevada Foreclosure Mediation Program.⁸ Consequently, a Notice of Trustee's Sale was recorded on January 26, 2011.⁹ The trustee's sale was scheduled to take place on February 16, 2011.¹⁰ However, on February 14, 2011 Toromanova recorded a Notice of Lis Pendens.¹¹ The Court dismissed Toromanova's complaint and released the *lis pendens* in an order dated August 17, 2011. Accordingly, another Notice of Trustee's Sale was recorded on September 1, 2011 and a sale was scheduled for October 3, 2011.¹² A Trustee's Deed Upon Sale was recorded on October 11, 2011.¹³

Toromanova filed her Complaint and Motion for Preliminary Injunction in state court on February 10, 2012.¹⁴ The state court did not take any action regarding the Motion for Preliminary Injunction.¹⁵ Wells Fargo removed the action to this Court on February 29, 2012.¹⁶ Then, on March 1, 2012, Wells Fargo filed its Opposition to Toromanova's Motion for Preliminary Injunction (Doc. 5). On March 9, 2012, the Court entered an order denying Toromanova's Motion for Preliminary Injunction (Doc. 10).

On March 7, 2012, Wells Fargo filed a Motion to Dismiss and Expunge Lis Pendens (the "Motion to Dismiss") (Doc. 7). On March 20, 2012, defendant National Default Servicing Corporation ("NDSC") filed a Joinder to the Motion to Dismiss (Doc. 11). On March 21, 2012, Toromanova filed her Opposition to the Motion to Dismiss (Doc. 12). On March 29, 2012, Toromanova filed her Opposition to NDSC's Joinder (Doc. 13). On April 2, 2012, Wells Fargo

⁸ See Mediation Certificate (Doc. 5-5), attached to the Opp. to Mot. for Prelim. Inj.as Exhibit 5.

⁹ See Notice of Trustee's Sale (Doc. 5-6), attached to the Opp. to Mot. for Prelim. Inj.as Exhibit 6.

¹⁰ *Id.*

¹¹ See Notice of Lis Pendens (Doc. 5-7), attached to the Opp. to Mot. for Prelim. Inj.as Exhibit 7.

¹² See Notice of Trustee's Sale (Doc. 1-2 at 36), attached to the Petition as Exhibit A.

¹³ See Trustee's Deed Upon Sale (Doc. 5-8), attached to the Opp. to Mot. for Prelim. Inj.as Exhibit 8.

¹⁴ See generally Compl. (Doc. 1-2); see also Mot. for Prelim. Inj. (Doc. 4-3 at 6).

¹⁵ See State Court Docket (Doc. 5-9), attached to the Opp. to Mot. for Prelim. Inj.as Exhibit 9.

¹⁶ See generally Petition.

1 filed a Reply in Support of the Motion to Dismiss (Doc. 16). On April 13, 2012, NDSC filed a
 2 Reply in Support of the Motion to Dismiss (Doc. 17). Accordingly, the Motion to Dismiss is
 3 fully briefed and ready for the Court's consideration.

4 On June 4, 2012, Toromanova filed the instant Ex Parte Application for Stay of
 5 Enforcement of Temporary Writ of Restitution in Unlawful Detainer Action and Preliminary
 6 Injunction (the "Application") (Docs. 18 and 19) seeking relief from a Temporary Writ of
 7 Restitution issued by the Justice Court. However, this Court does not have authority to review
 8 the Justice Court's decisions. Furthermore, Toromanova is not entitled to equitable relief.
 9 Accordingly, the Court should deny the Application.

10 III. ARGUMENT

11 A. This Court cannot affect the rulings and orders of the Justice Court.

12 In her Application, Toromanova pleads with the Court to "enter a Stay of the Writ of
 13 Restitution, a Temporary Restraining order and Preliminary Injunction that would prohibit
 14 Defendants . . . from evicting, taking possession of, or in any other manner interfere with the
 15 possession by Dimitritza Toromanova of her home."¹⁷ In essence, Toromanova asks this Court
 16 to render the orders of the state court meaningless so that she can continue living on the Property
 17 for free. Toromanova even admits in her declaration that she unsuccessfully appealed the Justice
 18 Court's decision.¹⁸ Yet, apparently convinced she should be allowed to remain on the Property
 19 indefinitely, Toromanova filed the instant Application hoping for a different result from this
 20 Court in its capacity as a *de facto* court of appeals. Unsurprisingly, however, Toromanova fails
 21 to provide any authority for her end-run around the appeals process. On the contrary, a United
 22 States District Court has no authority to review the judgments or interlocutory decisions of a
 23 state court.¹⁹ Accordingly, "because district courts lack power to hear direct appeals from state
 24 court decisions, they must decline jurisdiction whenever they are in essence being called upon to

25 ¹⁷ See App. 8:22-27.

26 ¹⁸ *Id.* at 10:14, 11:3-5.

27 ¹⁹ See *G.C. and K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1102 (9th Cir. 2003) (quoting *D.C. Court of*
 28 *Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923)); *Doe &*
Associates Law Offices v. Napolitano, 252 F.3d 1026, 1030 (9th Cir. 2001).

1 review the state court decision.”²⁰ Therefore, this Court cannot grant the relief requested and
 2 Toromanova’s Application must be denied.

3 **B. Toromanova is not entitled to a stay of enforcement, temporary restraining**
 4 **order, preliminary injunction, or any other equitable relief.**

5 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
 6 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
 7 the balance of equities tips in his favor, and that an injunction is in the public interest.”²¹ A
 8 preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear
 9 showing that the plaintiff is entitled to such relief” and is “never awarded as of right.”²²
 10 Accordingly, the Court “must balance the competing claims of injury and must consider the
 11 effect on each party of the granting or withholding of the requested relief.”²³

12 Here, the plaintiff has no likelihood of success on the merits, there is no threat of
 13 irreparable harm, and the balance of equities tips in favor of Wells Fargo. In particular, as set
 14 forth in the Motion to Dismiss, Wells Fargo’s Reply in Support of the Motion to Dismiss, and
 15 NDSC’s Joinders thereto, Toromanova fails to state a claim upon which relief can be granted.
 16 Therefore, the plaintiff is unlikely to succeed on the merits. Next, there is no threat of
 17 irreparable harm, as the foreclosure was expressly authorized by the plaintiff in the Note and
 18 Deed of Trust. Indeed, Toromanova cannot claim injury for being removed from property where
 19 she does not have a right to remain. Finally, Toromanova’s purported injury in being evicted
 20 from the Property is outweighed by the glaring inequity to Wells Fargo. Toromanova has been
 21 living on the Property without paying for *over two years*.²⁴ This is nothing short of a windfall
 22 for Toromanova, whereas Wells Fargo has been prevented from exercising its rights to the

23 ²⁰ See *Napolitano*, 252 F.3d at 1030 (citing *Feldman*, 460 U.S. at 482 n.16) (internal quotation marks
 24 omitted).

25 ²¹ See *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (9th Cir. 2008).

26 ²² *Id.* at 22, 24.

27 ²³ *Id.* at 24 (quoting *Amoco Prod. Co. v. Gambel*, 480 U.S. 531, 542 (1987)).

28 ²⁴ The Notice of Default was recorded on August 27, 2010, at which time Toromanova was \$25,840.85 in
 arrears. See Notice of Default.

1 Property. Toromanova's sense of entitlement is unfounded, and Wells Fargo should not be
2 forced to continue subsidizing Toromanova's stubborn refusal to accept the consequences of her
3 own actions. Accordingly, the Court should deny the Motion.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Wells Fargo respectfully requests that the Court deny the
6 Application and enter an order dismissing Toromanova's claims with prejudice and expunging
7 the *lis pendens*.

8 DATED this 21st day of June 2012.

9 DAVID J. MERRILL, P.C.

10
11 By:



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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 21st day of June 2012, service of the foregoing Opposition to Ex Parte Application for Stay of Enforcement of Temporary Writ of Restitution in Unlawful Detainer Action and Preliminary Injunction was made to all counsel in the action through the Court's CM/ECF system. In addition, service was made to the plaintiff by placing a copy in the United States Mail, postage prepaid and addressed to the following at her last known address:

Dimitritza Toromanova
2912 Hot Cider Avenue
North Las Vegas, Nevada 89031


An employee of David J. Merrill, P.C.